IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

MFA.No. 679 of 2002()

OP(MV).1475/1995 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, ALAPPUZHA

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APPELLANT: 3RD RESPONDENT:

THE NEW INDIA ASSURANCE CO.LTD.,
NOW REPRESENTED BY ITS ASSISTANT ADMINISTRATIVE
OFFICER, REGIONAL OFFICE, M.G.ROAD, KOCHI-11.

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS: PETITIONER AND RESPONDENTS 1 AND 2:

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1. JASMIN @ REJEENA, D/O.BEEGAM,
PADIPPURAKKAL HOUSE, MULLACKAL P.O., ALAPPUZHA.

2. DEVAKIRAM, S/O.KRISHAN GURDAN,
MANDIRTHOLADI DESOM, BILWARA DISTRICT,RAJASTAN.

3. SAKUNTHALADEVI,
W/O.OMPRAKASHJI AGARWAL, PEPLIAMAVELI,
BILWARA DISTRICT, MANDZOOR, MADHYAPRADESH.

BY ADV. SRI.A.KRISHNAN for R1

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.4006/2002 IN O.P.NO.21025/1999

DISMISSED.

SD/- K.PADMANABHAN NAIR, JUDGE

04/12/2007

\\TRUE COPY//

K.PADMANABHAN NAIR, J.

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M.F.A.No.679 of 2002-D

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Dated this the 4th day of December, 2007

J U D G M E N T

The third respondent-insurer in O.P.(M.V) No.1475/1995 on the file of the Motor Accidents Claims Tribunal, Alappuzha, has filed this appeal challenging the award passed by the tribunal, by which the appellant was directed to indemnify the insured.

2. The first respondent herein met with an accident on 19/07/1995. She filed original petition claiming compensation, alleging that the accident occurred due to the negligence of the driver of a lorry. The driver did not appear and contest. The owner contested the matter. He admitted the accident and contended that there was no negligence on the part of the driver. He further contended that the vehicle was covered with valid policy of insurance. The insurer denied the existence of a valid policy. It was contended that the accident occurred due to the negligence of the driver of the car in which the petitioner

was travelling. The allegation that the accident occurred due to the negligence of the driver of the lorry was denied. It was contended that the driver of the lorry had no driving licence, hence, there was violation of the policy. The quantum of compensation claimed was also disputed.

3. The tribunal found that the accident occurred due to the negligence of the second respondent in this appeal. It was also found that the first respondent applicant was entitled to get Rs.11,690/- as compensation. The appellant was directed to indemnify the insured finding that there was valid policy of insurance. Challenging that finding, this appeal is filed.

4. I have carefully gone through the evidence adduced in the case. The findings of the tribunal that the accident occurred due to the negligence of the driver of the lorry and that the first respondent is entitled to get Rs.11,690/- as compensation are based on good evidence. I do not find any reason to interfere with those findings of facts.

5. The learned counsel appearing for the appellant has argued that the spite of the specific denial neither the petitioner nor the owner produced copy of the policy. It is argued that there is absolutely no material on record to hold that the lorry was covered with a valid policy insurance. Ext.A2 is the copy of the scene mahazar. It also contains the body mahazar of the vehicles involved in the accident. In the mahazar, engine number and chasis number of the lorry were noted. The name of the insured is written as Shakunthala Devi. The appellant was shown as insurer of the vehicle. It was also noted that the policy was due to expire on 25/07/1995. The number of the policy was also noted as No.328800. The details of the licence and badge were also noted in the mahazar. The appellant has no case that the entries were falsely stated in Ext.A2. Ext.A2 is a document prepared by the police constable in the discharge of his official duties. I do not find any reason to disbelieve the statements in that document. So, there is material to show that the lorry was covered with valid policy of insurance issued by the appellant. Hence, the finding of the court below that the appellant insurer is bound to indemnify the insured cannot be interfered with.

There is no merit in the appeal and the same is only to be dismissed.

In the result, the appeal is dismissed.

K.PADMANABHAN NAIR,
Judge

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K.PADMANABHAN NAIR, J.

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M.F.A.No.679 of 2002-D

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J U D G M E N T

4th December, 2007